

---

## OLR Bill Analysis

**sSB 209 (File 191, as amended by Senate "A")\***

### ***AN ACT PROHIBITING UNSOLICITED COMMERCIAL TEXT MESSAGES AND INCREASING PENALTIES FOR VIOLATIONS OF THE DO NOT CALL REGISTRY.***

#### **SUMMARY:**

This bill broadens the scope of the laws regulating telemarketers. It generally prohibits telephone solicitors from making an unsolicited sales call, including sending texts and media messages, to consumers on the state "Do Not Call" registry unless they receive a consumer's prior express written consent (see BACKGROUND). Current law allows these calls upon written or verbal request. The bill also prohibits solicitors from making or causing to be made an unsolicited, automatically dialed, recorded telephonic sales call without prior express written consent. These messages are often referred to as "robocalls."

The bill (1) includes the sending of text or media messages among the registry's prohibited acts and (2) restricts when solicitors can send text and media messages. Under the bill, a text or media message is a message that contains written, audio, video, or photographic content and is sent electronically to a mobile telephone or electronic device telephone number, but does not include electronic mail.

The bill also increases the maximum fine for each registry violation from \$11,000 to \$20,000. By law and under the bill, "Do Not Call" violations are also deemed an unfair and deceptive trade practice.

Under the bill, each telephone and telecommunications company that issues an account statement to a consumer for providing telephone, mobile telephone, or mobile electronic device services must include, at least twice a year, a conspicuous notice on or with the statement. The notice must inform a consumer of (1) the prohibited actions of telephone solicitors; (2) how to place his or her telephone,

mobile telephone, or mobile electronic device number on the “Do Not Call” registry; and (3) how to obtain a registry complaint form on the Department of Consumer Protection website.

\*Senate Amendment “A”:

1. requires solicitors to receive prior express written consent under certain situations;
2. prohibits solicitors from (a) making unsolicited telephonic sales calls without prior express written consent and (b) sending unsolicited texts at any time rather than only between 9:00 p.m. and 9:00 a.m.;
3. allows telecommunications companies to send texts under certain circumstances;
4. expands the notice requirement to include additional disclosures and requires telephone companies to give them;
5. amends and adds definitions; and
6. makes technical changes.

EFFECTIVE DATE: October 1, 2014

**TEXT AND MEDIA MESSAGES**

The bill prohibits solicitors from sending these messages to a consumer’s mobile telephone or electronic device at any time.

Regardless of whether a consumer is on the registry, the bill allows solicitors to send text or media messages for marketing or soliciting sales of consumer goods, or cause them to be sent, only if the solicitor has received the consumer’s prior express written consent to receive such texts.

Under the bill, a telecommunications company may send a free text or media message to an existing consumer if the message is primarily in connection with (1) an existing debt or contract that has not been

paid when the message is sent or (2) a prior consumer-initiated request for customer service.

## **BACKGROUND**

### ***Prior Express Written Consent***

Under federal regulations, prior express written consent means an agreement, in writing, bearing the caller's signature (including electronic or digital signatures) that clearly authorizes the seller to deliver or cause to be delivered to the caller, advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice. The agreement must (1) include a clear and conspicuous disclosure with certain consumer protections and (2) give the telephone number the caller authorizes the messages to be delivered (47 CFR 64.1200).

### ***Do Not Call Registry***

**Connecticut Law.** State law allows any individual to register a telephone number with the "Do Not Call" registry, and prohibits telephone solicitors from making unsolicited telephone calls to any number listed on it. The law applies to calls made to (1) engage in a marketing or sales solicitation, (2) solicit a credit extension for such goods or services, or (3) obtain information to use in the soliciting a sale or credit extension.

The law does not apply to calls made or sent (1) in response to a consumer's visit to a seller's establishment; (2) by a tax-exempt nonprofit organization; (3) primarily in connection with an existing debt or contract that has not been paid or performed; or (4) to an existing consumer, unless he or she has informed the solicitor that he or she no longer wishes to receive the solicitor's calls (CGS § 42-288a).

**Federal Law.** The Federal Communication Commission restricts telemarketers from placing unsolicited robocalls and sending text messages under the Telephone and Consumer Protection Act. Under federal law, telemarketers cannot make robocalls based solely on an "established business relationship."

Federal law bans these texts unless (1) the recipient previously consented to receive the message or (2) the message is sent for emergency purposes. This ban applies even if a person has not placed his or her mobile phone number on the national Do Not Call list.

***Connecticut Unfair Trade Practices Act (CUTPA)***

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys' fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable

Yea 17 Nay 0 (03/13/2014)

Judiciary Committee

Joint Favorable

Yea 40 Nay 0 (04/14/2014)